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Citizenship and Immigration Services

Handwritten initials: HJ

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

FILE

[Redacted]

Office: COPENHAGEN, DENMARK

Date: FEB 06 2004

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Handwritten signature of Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Copenhagen, Denmark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Estonia who was found by a consular officer to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant married a United States citizen on January 26, 2001 and is the beneficiary of an approved Petition for Alien Relative (LIN-01-121-54943). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the application accordingly.

On appeal, counsel contends that the applicant's misrepresentation to a consular officer was not willful. Counsel further asserts that the applicant's husband suffers extreme hardship as a result of the applicant's inadmissibility and that the applicant merits a waiver as a matter of discretion. Counsel submits a brief supporting these assertions.

The record also includes copies of two letters signed by the applicant and the applicant's husband, dated August 23, 2002 and March 16, 2002, respectively; a copy of a certificate from the Estonian National Police Administration; copies of the passport photograph pages for the applicant and her daughter and a copy of the divorce decree for the applicant's husband and his first wife, dated September 16, 1996. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the

spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record demonstrates that on February 6, 2002, the applicant reported to the American Embassy in Helsinki, Finland for an interview regarding the Immigrant Visa application for her daughter. On February 6, 2002, the interviewing consular officer determined that the applicant had previously made misrepresentations of material facts before a consular officer in applying for and obtaining a visitor visa when she was already married. Counsel contends that the applicant did not misrepresent a material fact in applying for a visa; she merely misunderstood the forms she signed. Disclosure of marital status is a patent part of the visa application and inspection processes. A visitor visa would not have been issued to the applicant if she admitted to her marital status. See 8 U.S.C. § 1201(g). Further, the case law cited by counsel is distinguishable from the applicant's situation.¹

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country

¹ Counsel cites *Matter of I-L-*, 7 I&N Dec. 233 (BIA 1956). In *Matter of I-L*, an illiterate Mexican agricultural worker was forced to pay a bribe to Mexican officials to obtain a worker's card which was issued in a different name. Counsel also cites *Castaneda-Gonzalez v. INS*, 564 F.2d 417, a case in which the alien was found to have been negligent in failing to make certain that the facts stated by his friend in the application were accurate. See Motion to Reopen and Reconsider a Waiver of Inadmissibility Under INA § 212, 8 U.S.C. § 1182, pgs. 12-14.

to which the qualifying relative would relocate.

Counsel contends that departing the United States would impose extreme hardship upon the applicant's husband who has a career, strong ties to his religious community and a home in the United States. Counsel points out that the applicant's husband has a father and stepmother who require his presence in the United States as well as two daughters from his previous marriage. Counsel further asserts that the applicant's husband would suffer hardship starting his medical career anew in a foreign country and would burden his current colleagues by departing, as their radiology practice is extremely busy. Counsel contends that the applicant's husband would be forced to sell his home if he moved to Estonia. See Motion to Reopen and Reconsider a Waiver of Inadmissibility Under INA § 212, 8 U.S.C. § 1182, pgs. 16-20.

While counsel asserts hardship to the applicant's husband if he departs the United States, the record does not establish extreme hardship to him if he remains in the United States. The AAO notes that as a U.S. citizen, the applicant's spouse is not required to leave the United States as a result of the adjudication of the applicant's waiver. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Perez v. INS, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.